

EDMUND G. BROWN JR.  
Attorney General of the State of California  
DAVID S. CHANEY  
Chief Assistant Attorney General  
FRANCES T. GRUNDER  
Senior Assistant Attorney General  
ALVIN GITTISRIBOONGUL  
Supervising Deputy Attorney General  
JAMES M. SOBOLEWSKI, State Bar No. 99559  
Deputy Attorney General  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 327-6758  
Fax: (916) 324-5205  
Email: James.Sobolewski@doj.ca.gov

Attorneys for Defendants Martel, Willey, Knowles,  
Goughnour, Walker, Vance, and Pliler

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

**GREGORY LYNN NORWOOD,**

Plaintiff,

v.

**EDWARD ALAMEIDA, JR., et al.,**

Defendants.

2:03-cv-2554 GEB GGH P

**DEFENDANTS' TRIAL BRIEF**

Trial Date: October 30, 2007  
Time: 9:00 a.m.  
Courtroom: No. 10 - 13<sup>th</sup> Floor  
Judge: The Honorable  
Garland E. Burrell, Jr.

Defendants Martel, Willey, Knowles, Goughnour, Walker, Vance, and Pliler submit  
the following Trial Brief for the assistance of the court in this matter.

**FACTUAL SUMMARY**

Plaintiff Gregory Norwood is an inmate in the custody of the California Department of  
Rehabilitation. He is serving a life sentence without the possibility of parole. Mr. Norwood was  
incarcerated at California State Prison-Sacramento (CSP-SAC) from June 1995 to November  
2005.

In 2002 and 2003, Mr. Norwood was housed in the B Facility at CSP-SAC. B Facility is a self-contained facility that houses Level-IV prisoners, that is prisoners who present the greatest threat to institutional security and the safety of inmates and staff. B Facility consists of 8 building or blocks, which open onto a yard. Each building contains 64 cells with 128 beds. The total maximum population of B Facility is 1,024 inmates. B Facility traditionally housed inmates who refused to program and consistently got into trouble. The inmate population of B Facility included all races and ethnic groups.

The subject of the present action is lockdowns that were ordered as a result of four serious assaults on staff in B Facility in 2002 and 2003. The lockdowns effected all inmates in B Facility including the Plaintiff.

Lockdowns are normally recommended by the facility captain and approved by the warden. During the lockdown, all normal programs are canceled and inmates are confined to their cells. Medical and psychiatric services are available to the inmates. The lockdown allows prison staff the ability to investigate the assault and the events that triggered it under secure conditions, prevent further incidents, remove and isolate inmates responsible for the attacks, and diffuse tensions under controlled circumstances. Thereafter, steps are taken to gradually unlock the prison and resume normal programming. The investigation is wide-ranging and time consuming, and weekly or more frequent meetings are held by senior management staff to discuss the status of the investigation and consider the unlock process based on the facility security concerns.

The four lockdowns that are the subject of the present case occurred during the following periods<sup>1/</sup>:

First Lockdown	January 4, 2002, to March 27, 2002;
Second Lockdown	May 8, 2002, to July 31, 2002;
Third Lockdown	December 28, 2002, to May 15, 2003; and
Fourth Lockdown	September 3, 2003, to November 4, 2003.

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1. The lockdown dates set forth are those dates that Mr. Norwood was in lockdown, and may be shorter than the total lockdown period in B Facility.

1           The unlock process consists of returning the facility to normal programming. The  
 2 process is accomplished incrementally by releasing small numbers of inmates and observing the  
 3 response. Generally, critical workers are released first. Thereafter, non-involved races are  
 4 released, followed by non-involved groups (gang affiliations.) Privileges are restored  
 5 incrementally as inmates are released and return to work assignments. The gradual release of  
 6 inmates provides staff with an opportunity to observe their conduct in a controlled setting and  
 7 make judgments regarding institutional safety and security and the continued progress of the  
 8 unlock efforts. When serious incidents occur during the unlock process, it sometimes becomes  
 9 necessary to return those inmates already released to lockdown until further investigations can be  
 10 completed. Senior management at CSP-SAC followed these procedures to unlock B Facility  
 11 after each lockdown.

12           Mr. Norwood has sued Defendants Martel, Willey, Knowles, Goughnour, Walker,  
 13 Vance, and Pliler. Mr. Norwood has alleged that the Defendants violated his Eighth Amendment  
 14 right against cruel and unusual punishment by depriving him of outdoor exercise opportunities  
 15 when they imposed these lockdowns. The Defendants involved in each lockdown are:

16           First Lockdown	C. Pliler, Warden;
17	T. Goughnour, Associate Warden – B Facility;
18	S. Vance, B Facility Captain;
19           Second Lockdown	T. Goughnour, Associate Warden – B Facility;
20	S. Vance, B Facility Captain;
21           Third Lockdown	C. Pliler, Warden;
22	M. Martel, Associate Warden – B Facility;
23	S. Vance, B Facility Captain;
24	D. Willey, B Facility Captain (Acting);
25           Fourth Lockdown	M. Knowles, Warden (Acting);
26	J. Walker, Associate Warden – B Facility (Acting); and
27	D. Willey, B Facility Captain (Acting).

28           Mr. Norwood is requesting compensatory and punitive damages for each lockdown.

SUMMARY OF THE LAW

**A. The law controlling Norwood's Eighth Amendment claim requires him to prove that the deprivation of outdoor exercise was sufficiently serious and that it resulted from Defendants' deliberate indifference.**

The Eighth Amendment prohibits prison officials from denying prisoners the basic necessities of life without any penological justification. *Rhodes v. Chapman*, 542 U.S. 337, 347 (1981). A prisoner who complains of conditions of confinement that are not part of the formal penalty imposed for a crime must show (1) a sufficiently serious deprivation and (2) that defendants acted with a sufficiently culpable state of mind, that is were deliberately indifferent in their actions. *Wilson v. Seiter*, 501 U.S. 294, 303 (1991).

The deprivation of exercise can amount to an objectively serious deprivation that would violate the Eighth Amendment. *Keenan v. Hall*, 83 F.3d 1083, 1089-90 (9th Cir. 1996). A prisoner's right to outdoor exercise, however, is not absolute. Such exercise must be provided "unless inclement weather, unusual circumstances, or disciplinary needs made that impossible." *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979).

If the deprivation is serious enough to implicate the Eighth Amendment, plaintiff must prove that defendants were deliberately indifferent to the need for exercise, meaning that they knew of the deprivation, yet failed to take reasonable measures to satisfy the need or correct the condition. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). In considering deliberate indifference, the jury must also consider that defendants had a competing obligation under the Eighth Amendment to ensure the safety of prisoners, including protecting prisoners from each other. *Id.* at 833.

Where there has been a particularized security risk, courts, including the Ninth Circuit, have permitted long-term denials of exercise. *See, e.g., LeMaire v. Maass*, 12 F.3d 1444, 1458 (9th Cir. 1993) (finding no Eighth Amendment violation where prisoner denied out-of-cell exercise for 5 years because inmate posed constant threat of attack); *Rodgers v. Jabe*, 43 F.3d 1082, 1088 (6th Cir. 1995) (holding that unconstitutionality of using exercise restriction as punitive sanction for prisoner's misconduct not clearly established); *Davenport v. DeRobertis*, 844 F.2d 1310, 1315 (7th Cir. 1988) ("The exception for fractious inmates protects the

1 defendant's legitimate interest in security").

2 Finally, prison officials are entitled to deference in their adoption and execution of  
3 policies and practices that in their judgment are needed to preserve discipline and to maintain  
4 internal security in a prison. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979).

5 **B. Norwood's references to regulations relating to Disciplinary Detention and**  
6 **Administrative Segregation in Title 15 of the California Code of Regulations**  
**is misplaced and irrelevant.**

7 "Relevant evidence" means evidence having any tendency to make the existence of  
8 any fact that is of consequence to the determination of the action more probable or less probable  
9 than it would be without the evidence." Fed. R. Evid. 401. Evidence should be excluded when it  
10 lacks relevance. Fed. R. Civ. P. 402. Evidence may also be excluded when its probative value is  
11 substantially outweighed by the danger of unfair prejudice, confusion, or needless delay. Fed. R.  
12 Evid. 403.

13 Mr. Norwood has referenced sections of Title 15 of the California Code of regulation  
14 relating to Disciplinary Detention (Cal. Code Regs. tit. 15, §§ 3330 et seq.) and Administrative  
15 Segregation (Cal. Code Regs. tit. 15, §§ 3335 et seq.) These regulations set forth requirement  
16 relating to prisoners who are removed from general population and place in detention or  
17 administrative segregation. Mr. Norwood seeks to use these sections and suggest that they apply  
18 to lockdown situations. This suggestion is incorrect.

19 A lockdown occurs when institutional safety and security concerns require a lockdown  
20 of the general population. Mr. Norwood complains of the loss of opportunity to exercise during  
21 these lockdowns in violation of his Eighth Amendment rights. The controlling case law states  
22 that such lockdowns with the resulting loss of opportunity to exercise are permitted under  
23 circumstances of "inclement weather, unusual circumstances, or disciplinary needs." *Spain v.*  
24 *Procurier*, 600 F.2d at 199. The issue in this case is therefore whether or not unusual  
25 circumstances or disciplinary needs continued during the lockdown to justify the loss of  
26 opportunity to exercise. Reference to regulations relating to disciplinary detention or  
27 administrative segregation are irrelevant for this consideration, as are testimony and argument  
28 regarding these regulations.

**CONCLUSION**

When the applicable law is applied to the facts of this case, Defendants are confident that the only reasonable decision will be for judgment in their favor.

Dated: October 23, 2007

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of the State of California

DAVID S. CHANEY  
Chief Assistant Attorney General

FRANCES T. GRUNDER  
Senior Assistant Attorney General

ALVIN GITTISRIBOONGUL  
Supervising Deputy Attorney General

*/s/ James M. Sobolewski*

JAMES M. SOBOLEWSKI  
Deputy Attorney General  
Attorneys for Defendants

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Gregory Lynn Norwood v. Edward Alameida, Jr., et al.**

No.: **2:03-cv-2554 GEB GGH P**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 23, 2007, I served the attached **DEFENDANTS' TRIAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Gregory Lynn Norwood  
J-53407  
California Substance Abuse Treatment  
Facility  
C1-103  
P. O. Box 5244  
Corcoran, CA 93212  
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 23, 2007, at Sacramento, California.

S. Burke

Declarant

*/s/ S. Burke*

Signature